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09/526,379	03/16/2000	Lecon Woo	1417Y P 418	2449

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EXAMINER

RAYFORD, SANDRA M

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

LD

<b>Office Action Summary</b>	<b>Application No.</b> 09/526,379	<b>Applicant(s)</b> WOO ET AL.	
	<b>Examiner</b> Sandra M. Nolan	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 September 2004 has been entered.

### ***Claims***

2. Claims 1-11 and 13-33 are pending. Claims 12 and 34 have been cancelled.

### ***Allowance Withdrawn***

3. The potential allowability of claims 4-6 and 26-30 is withdrawn in view of the double patenting rejections below.

### ***Rejections Withdrawn***

4. All of the 35 USC 102 and 103 rejections made in the 30 September 2004 office action are withdrawn in order to apply the new rejections below.

### ***Summary of Base Claims***

5. At the request of her supervisor, the examiner is summarizing claims 1 and 21, the independent or base claims of the application, here.

Claim 1 covers a flowable materials container comprising:

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first and second sidewalls sealed together along a peripheral seam to define a chamber, wherein at least one of the sidewalls is a film having at least one layer of a blend consisting of:

-55 to 99% of a first film component selected from the group consisting of: (a) ethylene/alpha-olefin copolymers with a density of less than 0.915 g/cc, (b) ionomers, and

-1 to 45% of a second film component selected from the group consisting of: (a) propylene-based polymers, (b) polybutene polymers, (c) polymethylpentenes, (d) cyclic olefin polymers, and (e) bridged polycyclic hydrocarbon-containing polymers; wherein the film has certain of modulus of elasticity, internal haze, internal adhesion and heat-sealability properties.

Claim 21 covers a flowable materials container comprising:

first and second sidewalls sealed together along a peripheral seam to define a chamber, wherein at least one of the sidewalls an *irradiated layer* of a blend consisting of:

-55 to 99% of a first film component selected from the group consisting of: (a) ethylene/alpha-olefin copolymers with a density of less than 0.915 g/cc, (b) ionomers, and

-1 to 45% of a second film component selected from the group consisting of: (a) propylene-based polymers, (b) polybutene polymers, (c) polymethylpentenes, (d) cyclic olefin polymers, and (e) bridged polycyclic hydrocarbon-containing polymers.

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Note: The examiner interprets “ethylene and  $\alpha$ -olefin copolymers” (recited in line 5 of each of claims 1 and 21) to mean ethylene/alpha-olefin copolymers and “flowable materials (recited in line 1 of each of claims 1 and 21) to mean materials that are liquids at room temperature.

### ***New Rejections***

#### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1, 9-11, 13-23, 31-33 and 35-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenbaum (WO 95/13918) in view of Sudo (EPO-0556034A1).

Rosenbaum is discussed in section 9 of the 05 May 2003 office action.

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Note that the irradiation of the Rosenbaum films is deemed a process limitation that does not affect the patentability of the films. Also its containers are deemed suitable to house liquids.

Rosenbaum does not teach cyclic olefin copolymers.

Sudo is discussed in section 12 of the 05 May 2003 office action. Note that its cyclic olefin copolymers can be blended with olefin polymers (Sudo, page 3, line 24) and that they have superior chemical resistance (Sudo, page 3, lines 38-44).

The references are analogous because they both deal with medical containers made from olefin-based polymers.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the cyclic olefin copolymers of Sudo in blends from which the containers of Rosenbaum are made in order to give the containers chemical resistance.

The motivation to employ the cyclic olefin copolymers of Sudo in blends from which the containers of Rosenbaum is found at page 3, line 24 and page 3, lines 38-44 of Sudo, where resin blends and chemical resistance are discussed.

It is deemed beneficial to make medical containers that have chemical resistance so that the filled containers can be stored for longer periods.

9. Claims 1-3, 7-8, 13-25, 31 and 35-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenbaum in view of Wilhoit et al (US 5,928,740).

Rosenbaum is discussed above.

It fails to teach the propylene-based copolymers claimed.

Wilhoit is discussed in section 13 of the 05 May 2003 office action. Note that it teaches heat sealability and puncture-resistance (Wilhoit, abstract) in articles made from blends of ethylene/alpha-olefin copolymers, with the alpha olefins used containing from 3 to 10 carbon atoms (Wilhoit, col. 7, lines 24-38 and 59-63). Also, Wilhoit teaches that its films can be crosslinked with radiation (col. 10, lines 22-24).

Since propylene contains 3 carbon atoms, its copolymers with ethylene were contemplated by Wilhoit.

The references are analogous because they both deal with olefin-based polymer films.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the blends of Wilhoit in the compositions from which Rosenbaum makes its containers in order to improve their heat-sealability and puncture resistance.

The motivation to employ the blends of Wilhoit in the compositions from which Rosenbaum makes its containers is found in Wilhoit's abstract, where the heat sealability and puncture-resistance of articles made from its blends are taught.

It is deemed desirable to make containers that are heat-sealable and puncture resistant to house liquids so the contents can be safely stored and transported therein.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-11 and 13-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-58 of U.S.

Patent No. 6,743,523.

The '523 patent and this application have the same inventive entity.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the use of the films of the '523 claims—which contain the resin blends claimed in applicants' case—to make containers for liquids would be obvious to one having ordinary skill in the art.

Note that claims 1 and 22 of the patent states that the film can be heat sealed into container.

The use of the films of the '523 claims to make container for liquids would be an obvious matter of engineering choice if one wanted the containers to have the elasticity, haze and autoclaveability recited in claim 1 of the patent.

12. Claims 1-11 and 13-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 179-191 of copending Application No. 09/917,136 (as the claims were recited in the 13 December 2004 amendment in that case).



The '136 application and this application have at least one common inventor.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the polymer blends of the '136 application are the same blends recited in the instant claims and the formation of a container from the films is recited in claims 179 and 184.


This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**Conclusion**

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

  
S. M. Nolan-Rayford  
Primary Examiner  
Technology Center 1700

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